IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 242 of 2005

Between:

U. Ganga Raju S/o Veeranna
Gopavaram Village, Nidadavole Mandal, West Godavari district

..... PETITIONER

AND

1 Manager Sri Gubbalamma Ammavari Temple, Gopavaram VIllage,

Nidadavole Mandal, West Godavari district
2 K.N. Satyanarayana Ex-Trustee, Sri Gubbalamma Amaavari Temple,
Gopavaram Village, Nidadavole Mandal, West Godavari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any direction or Writ one is more particularly Writ of Mandamus declaring the action of the 1st Respondent in issuing the show Cause Notice dated 31-12-2004 without jurisdiction and consequently SET A Side the show Cause Notice Memo No. 53/2003, dated 31-12-2004 and pass such other order or orders.

Counsel for the Petitioner: MR.N.GURU GOPAL

Counsel for the Respondent No.1: SMT.N.INDRANI

Counsel for the Respondent No.2: MR.N.SIVA REDDY

The Court at the admission stage made the following:

ORDER:

The writ petition is filed for declaring the alleged action of the first respondent in issuing the show cause notice Memo No.53 of 2003 dated 31.12.2004 as without jurisdiction and consequently to set aside the same.

It is unnecessary to reproduce all the contentions raised by the learned counsel for the petitioner and the learned Standing Counsel in the writ petition, as the short question that falls for consideration is as to whether the Manager of Sri Gubbalamma Ammavari Temple, Gopavaram village, Nidadavole Mandal, West Godavari District, (hereinafter referred as 'the temple'), the first respondent, is competent or empowered to suspend an employee or to take any disciplinary action.

The learned counsel for the petitioner contended that under Section 37 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), the trustee alone is competent to take any disciplinary action including imposition of fine, removal or dismissal or any other prescribed penalty. It is also stated that under Section 29 (5) (d) of the Act, where there is no Executive

Officer in respect of any charitable or religious institution or endowment, the trustee or the Chairman of the Board of Trustee, as the case may be, of the institution or endowment shall exercise the powers, perform the functions and discharge the duties of an Executive Officer. But, there are no vice versa powers to the Manager to take any disciplinary action. Therefore, it is contended that the impugned order passed by the Manager of the temple is liable to be set aside as the Manager is incompetent. The learned counsel also relied upon the interim orders of this Court in W.P.M.P.No.8993 of 2004 in W.P.No.12173 of 2003, and in W.P.M.P.No.6917 of 2004 in W.P.No.5300 of 2004, which are confirmed by the Division Bench of this Court.

The learned Standing Counsel appearing for the first respondent contended that as the Manager is administering and managing the religious institution in the absence of trustee, he is bestowed with the powers and hence he is competent to take any disciplinary action against the employees. The learned counsel appearing for the second respondent also contended that the Manager is the competent person to take any disciplinary action.

Admittedly, the impugned order is a show cause notice issued by the Manager of the temple as to why the petitioner's services could not be terminated for producing false educational certificate for getting the employment as a Clerk in the temple and called for the explanation of the petitioner within a period of three weeks from the date of receipt of the show cause notice. At the relevant point of time, there was no trustee for the temple.

It is apt to note Section 37 (1) of the Act, which reads as under:

> "**37.Punishment of office holders and servants:-** (1) All Office-holders and servants attached to a charitable or a religious institution or endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reasons to be recorded in writing, impose fine, or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of the

> conduct laid down or neglect of duty assigned by or under this Act or sufficient cause."

A plain reading of Section 37 (1) of the Act clearly indicates that it is the trustee who alone can take disciplinary action against the employees.

It is also pertinent to note Section 29 (5) (d) of the Act, which is extracted below:

> "(d) Where there is no Executive Officer in respect of any charitable or religious institution or endowment, the trustee or the Chairman of the Board of Trustees, as the case may be, of the institution or endowment shall exercise the powers, perform the functions and discharge the duties of an Executive Officer."

A perusal of the above Section also makes it clear that when there is no Executive Officer, it is the trustee or the Chairman of Board of Trustees, who shall perform the functions and discharge the duties of an Executive Officer. As rightly pointed out by the learned Counsel for the petitioner, there is no corresponding provision where, in the absence of a trustee, the Executive Officer can discharge the functions and duties of the Trust Board.

'Trustee' is defined under Section 2 (29) of the Act, which reads as under:

> "(29) 'Trustee' means any person whether known as mathadhipati, mahant, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustees."

In the absence of any Trust Board, the person who is administering and managing the affairs of the religious institutions can be treated as a trustee within the meaning of Section 2(29) of the Act. It is not specifically denied in the affidavit that the Manager who issued the

impugned show cause notice is not administering and managing the affairs of temple. The above provision makes it clear that any person who is vested with the powers of administration and management of the charitable institution is also a trustee within the meaning of the Act. Hence, the Manager in my considered opinion is competent to pass the impugned order. Accordingly, the interim orders passed by this Court cannot have any binding force since they are made only in the interlocutory applications.

It is also contended by the learned counsel for the petitioner that the Manager is an employee of the temple and he is not an Executive Officer to take any disciplinary action. I am unable to accept the contention of the learned counsel for the petitioner. In the absence of any person to act on behalf of trustee, the person who is entrusted with the management and administration of the temple can be deemed to be a trustee within the meaning of Section 37(1) of the Act. Therefore, I am of the view that the Manager is competent to issue the impugned proceedings. Hence, I do not find any merit in the writ petition warranting interference of this Court under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed as devoid of merit. However, as the impugned proceedings is a show cause notice, the petitioner can as well submit his explanation. No order as to costs.

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03.03.2005

Note: Issue CC by tomorrow

(b/o)

VGB

To

1 The Manager Sri Gubbalamma Ammavari Temple, Gopavaram VIllage,

Nidadavole Mandal, West Godavari district

2 2CD copies